Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

GEORGE L. KOYNOK,

Petitioner,

v.

PHYLISS M. HAMILTON
ANNA. M. HAMILTON
KEN LONSINGER
RUSSELL REED
ANDREW J. BROCKENBROD
RICHARD W. MESSIMER
ELMER W. MALLESSEE, JR. and
DONNA L. MALLESSEE, individually and as husband and wife
ANNA MARIE GERAUD
RICHARD D. GRUBB, and
AUDREY GRUBB, individually and as husband and wife,

Respondents.

On Petition For Writ of Certiorari
To The Supreme Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

GEORGE L. KOYNOK, Pro Se
2850 Glenmore Avenue
Pittsburgh, PA 15216
412/531-6577

QUESTIONS PRESENTED

1. May Pennsylvania courts ignore the established principles of law-on-the-case, commonly called "the coordinate jurisdiction rule." which, being given notice of it, a second trial court judge disregarded, and dismissed Petitioner's complaint which a previous court had already approved, accepted and ordered to be answered by respondents who disobeyed the order; and, may the review courts, then, give precedence to the second judge who put Petitioner out of court?

2. Where the law in Pennsylvania says that statements made by witnesses and parties in the course of judicial proceedings are absolutely privileged no matter how defamatory or invasive of privacy rights, may Pennsylvania courts, applying the same rule to zoning board hearings, where the statements impute crime and/or business misconduct not pertinent to zoning, where recipients have no authority to grant publicists relief, deny a private individual redress guaranteed by the First Amendment?

3. Can it ever be a matter of constitutional deprivation when courts in Pennsylvania grant demurrers dismissing claims for defamation and privacy invasion on the basis all protesters at zoning board hearings possess absolute immunity because such hearings automatically engage them in "public controversies" where all words are "fair comment" about "public affairs" even though no evidence is submitted that such criticisms advance any significant public interest or logically tend to establish any material fact in the case?

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JURISDICTION STATEMENT

This Court has jurisdiction based on 28 USCS, § 1257, review of final judgments of "highest" state courts, involving claims under right and/or privilege guarenteed under federal law.

STATEMENT OF THE CASE

The Facts from the Complaint, Briefs and Record

In 1959 Petitioner bought a 15-room, 5-bath building at 2850 Glenmore Avenue, Dormont Borough (Boro), Pittsburgh, Pennsylvania 15216. Built in 1903 its owners used it as a commercial enterprise and rooming-boarding home for 56 years. The Boro granted them such permission by right. The PA Department of Labor and Industry (L & I) which approves certain building constructions in the State, upon Petitioner's request, inspected and approved the building's fire escapes, fire alarm system, emergency lightning, room sizes, boiler room enclosure, entries and exits, and the 2-4 hour ceiling cover in the basement and all other construction changes. Thereupon the Boro also granted the use as did L & I as a special boarding-sleeping home. From 1903 till 1997 (94 years) the building was situated in a high density zone reserved not for single family use but for apartments, high-rises, condominiums and the like, labeled as "R-4". In 1997 the Boro changed the district to "R-2", that is, a low density, single and double family occupancy. In 2003, holding Petitioner's use violated the new zoning ordinances, the Boro insisted Petitioner apply for variance, or conform to the R-2 new use, maintaining Petitioner's sleeping rooms were apartments no longer permitted in the new zone. Of the 15 rooms where only 3 of them were used as sleeping room rentals, only one (1) of them had a kitchen, two of the other three had no self-contained bathrooms, which proved, all 15 rooms according to Boro rules, definitions, and ordinances, were <u>not</u> apartments but sleeping rooms. Petitioner put those indisputable facts into an affidavit, and a month prior to the required hearing, served it personally on all Boro officers, and the zoning board members. The affidavit swore the building had no apartments and the Petitioner did not intend to install any. The hearing was on April 17, 2003, in which the

Petitioner argued to keep the rooms as L & I and the Boro itself had permitted, while the Board and the Boro conducted the hearing according to the new zoning ordinances' requirements. The Boro notified many residents that Petitioner wanted to tear down his building and create new apartments -- totally false. Eleven (11) of them testified as being bitterly opposed to any new construction of apartments, and attacked Petitioner's person, character, business and reputation. Petitioner tried to argue from the affidavit about which the Boro officials at the hearing, and the Board members themselves kept silent. On December 24, 2003, Petitioner filed suit against the eleven (11) Respondents for defamation and privacy invasion.

JUDGE C.A. BALDWIN'S CRITICAL, BUT MISLEADING OPINION

On p. 4 of the Opinion, the lower court stated true facts until it wrote the following falsity: "On October 11, 2004, the Honorable R. Stanton Wettick, Jr., issued an Order that denied Koynok's Motion as to comments allegedly made by legal counsel, but granted the Plaintiff leave to amend his original complaint to include other claims for punitive damages." The lower and the appellate courts apparently did not read the original record in the case, but seemingly relied solely on the brief and pleadings of the Respondents. The record shows that Judge Wettick personally wrote that he approved and accepted the entire amended complaint and ordered the Respondents to answer the amended complaint within 30 days. (Appendix, EX. "A"). The Respondents moved to dismiss all claims to punitive damages which the trial court denied because it said the pleadings, some of which it read out loud, permitted such damages. The Respondents did not obey this Order; the lower and appellate courts even when notified by the Petitioner of the failure, said nothing, and did nothing.

DEMURRERS AND SUMMARY JUDGMENTS

In state and federal courts demurrers and summary judgments are granted when a plaintiff has failed to state a legal claim and are not disturbed unless there is a proof they have committed error of law, abused their discretion, or violated a constitutional right. Such is the "standard of review," the Honorable Judge C.A. Baldwin placed in her Opinion, attached in the Appendix. In CONLEY V. GIBSON, 355 US 41, 45 (1957), this Court said complaints may be dismissed only if it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Thus courts must look to "whether sufficient facts are pleaded to determine that the complaint is not frivolous, and to provide defendants with adequate notice to frame an answer." COLBURN V. UPPER DARBY TWP., 838 F 2d 663, 666 (3d Cir. 1988), cert. denied 489 US 1065 (1988), and all allegations, and all resonable inferences therefrom, must be accepted as true and viewed in the light most favorable to the plaintiff.

In briefs to the lower and appellate courts Petitioner took the words of each of the eleven (11) Respondents and strictly followed elements Pennsylvania law (42 PA CSA, § 8343 (A) demands be proved. To the contrary, neither the Respondents nor the state courts attempted in any way to show or to prove the Respondents followed elements of Pennsylvania law (42 PA CSA § 8343(B) to prevail. There exists no way they can reliably or reasonably show what they published about the Petitioner was true, that the Petitioner requested them to publish their statements to a zoning hearing board which had no authority or power to assist them in redressing their grievances which had absolutely nothing to do with the issue of installing apartments or sinks and a door.

99% of Petitioner's factual allegations and inferences derived therefrom where not legal or unsupported conclusions, but were well-pleaded. The reason is that the published statements of the Respondents were taken from the certified record of the zoning board hearing made by an official court reporter which lists in detail the conduct and the publications of each of the Respondents which the controlling state and federal courts mandate, according to stare decisis, are per se defamatory and abusive of personal privacy. The certified record of the hearing identifies each of the eleven Respondents and infallibly lists their conduct and their statements. Thus the grant of the lower courts' demurrers cannot possibly nor reasonably be based on lack of proof of any material fact. As this Court said in ANDERSON V. LIBERTY LOBBY, INC., 477 US 242 (1968) the movant (here, the Respondents) has the burden of showing there is no genuine issue of fact and that their arguments are so one-sided they must prevail as of matter of law, but factual disputes that are irrelevant or unnecessary will not be counted. In this case, not only the Respondents, but also the state courts, failed to identify which of the published statements are critical and which facts are irrelevant. The appellate courts allowed the lower courts make determinations of credibility, weigh evidence and draw inferences from only the facts they selected -- jury functions. ANDERSON, 477 US at 257.

Moreover, Pennsylvania law mandates that when a plaintiff pleads defendants' publications are malicious, they admit the truth of the allegations. Then, the case must go to a jury; a judge may not grant a demurrer. HART V. O'MALLEY, 436 PA SUPER 151 (1994); MCINTYRE V. WEINERT, 195 PA 542 (1900).

THE DEFAMATION MATTER

It was an abuse of discretion when the Respondents and all the Pennsylvania courts unreasonably eliminated the following statements published by the Respondents, joint-tortfeasors, contained in the certified record regarding Petitioner's claims of defamation, privacy invasion, and punitive damages, for which they offered not a scintilla of evidence or truth:

Petitioner is hiding illegal activites in his home;

Respondent fears for her daughter's and her own safety for what Petitioner and his tenants do in his home;

Petitioner sells weapons out of his home;

Petitioner has lied frequently under oath;

It is impossible for Petitioner to make improvements in his property;

Petitioner does not know how to conduct a real business;

Petitioner's tenants' are highly transient and disgusting;

Petitioner abandons cars on the street;

Petitioner has interfered with postal delivery service;

Respondent infers Petitioner is in the drug business;

Respondent admits she video-tapes Petitioner's and his tenants' illegalities;

Petitioner stores illegal guns in his home;

Petitioner is dishonest in his business practices;

Petitioner lacks integrity in his business practices;

Petitioner is an illegal landlord;

Petitioner does not pay his taxes;

Petitioner does not pay his wage taxes;

Petitioner runs activities "under the table";

Petitioner is a thief who has stolen money from the Borough which amounts to felonies;

Any alterations made by Petitioner will deteriorate the entire neighborhood;

Petitioner's tenants will cause too much noise;

Petitioner's tenants' children will have no place to play;

Petitioner will open up a retail store;

Petitioner already has illegal apartments and will put in more of them.

THE DEMURRER GRANTED BY JUDGE TIMOTHY O'REILLY

Five (5) different lawyers represented the eleven (11) Respondents. Two (2) Respondents filed their own demurrers with Judge O'Reilly on April 21, 2004, who granted them complaint dismissal (see EX. "B" in the Index) based on one case the Judge said was "controlling," ELIA V. ERIE INSURANCE EXCHANGE, 430 PA SUPER 384 (1993). However, ELIA deals only with defamation and has no relation at all to privacy invasion. In ELIA, contrary to what Judge O'Reilly did, plaintiff, Elia, had his defamation case dismissed because he gave permission for a doctor employed by the insurance company to make comments about his medical condition, for which statements, considered to be defamatory by Mr. Elia, he sued the company. Thus, Judge O'Reilly is wrong that ELIA is controlling: 1) Respondents in the present case volunteered their comments; and 2) ELIA has nothing to do with a claim for privacy invasion or punitive damages; and 3) Petitioner repeatedly has pleaded the statements of Respondents were made maliciously, a question which a jury, not a judge must answer. Therefore, the demurrer should not have been granted according to Pennsylvania Law.

JUDGE C.A. BALDWIN, NOW A PA SUPREME COURT JUSTICE, MADE MULTIPLE ERRORS OF LAW AND ABUSED HER DISCRETION BY MAKING GROSSLY UNREASONABLE CONCLUSIONS BASED ON MISPLACED "CONTROLLING" CASES

On page eight (8) of her opinion, Judge Baldwin lists six (6) cases but fails to say how they control the present case. Her allegations are legal and unsupported conclusions and not cast in the form of actual statements pertinent and material to the issues of this case.

On page nine (9) she begins to infer and then say that Respondents' statements must be granted absolute privilege based on four (4) cases which are misplaced. Case #1, SHORTZ V. FARRELL, 193 A 2d 20, 21-22 (PA1937), is a case about the duties of lawyers in a Workman's Compensation matter where a layman was found guilty of practicing law without a license. SHORTZ actually backs up Petitioner's pleadings that findings of fact in agency hearings should be based on competent evidence. Id, at 85. In this case, not a single statement of any of the Respondents are found as "facts" influencing the zoning board's hearing's outcome where the hearing judge labeled them all as "not relevant to zoning," (pp. 93-94 of the certified record) and as "hearsay" (p. 103; appendix G(1), G(2). Further, Respondents produced no evidence what they published was true.

In case #2, URBANO V. MENESES, 431 A 2d 308 (PA SUPER 1981), Judge Baldwin's comments are incomplete and misplaced. URBANO does not deal with witnesses at a zoning board hearing, but with members of the zoning board itself who had judicial immunity.

Case #3, POST V. MENDEL, 507 A 2d 351 (PA 1986), dealt with an attorney, Mendel, who sent a letter to his trial adversary, Post, with copies to a disciplinary board, trial judge and one of Post's clients, which statements in the letter received judicial privilege, which lower court ruling was reversed by the PA Supreme Court because the statements were not pertinent and material to the redress sought. In other words, the statements in POST, like the statements in Petitioner's case, were not: 1) issued as a matter of regular course of the proceedings; or 2) pertinent and material to the proceedings.

In Petitioner's case, the statements were not relevant, not because the hearing officer said so, but because they were not facts at issue, nor tended to establish a material fact in the case. In addition, the Respondents' publications were not privileged because not made to persons, like the zoning board and at least 15 others, who had a direct interest in redressing their complaints and had power to assist their interests, or begin to inquire into the gist of their statements.

Judge Baldwin's case #4, ROLLA V. WESTMORELAND HEALTH SYSTEM, 651 A 2d 160 (PA SUPER 1994), involved a family custody issue where the court ordered the System to conduct a psychiatric evaluation of Mr. Rolla to determine his fitness to raise his daughter. Mr. Rolla sued the System for the report he thought to be defamatory. The ROLLA case has nothing to do with a zoning hearing where neither the Petitioner nor the Board requested or ordered the Respondents to make reports about the personal life of the Petitioner.

INVASION OF PRIVACY -
FALSE LIGHT AND INVASION INTO SECLUSION

In his original and amended complaint Petitioner has listed the multiple statements made by each of the eleven (11) Respondents taken, first, from the certified record of the hearing before the local zoning board; secondly, from party admissions made by several of them; and, thirdly, from Petitioner's own business records. In his briefs before two lower court judges, and in those produced for the two PA appellate courts, he has taken each of the many statements and, together with Respondents' many acts, showed them not only to be false but made with knowledge of their falsity and with malice. He finally used controlling PA case law in attempts to prove what the Respondents published and how they acted were invasions of his privacy and defamatory. One trial judge allowed the claim for punitive damages based on the entire record before him.

Any kind of examination of the Respondents' pleadings and briefs, together with Judge Baldwin's Opinion, reveals that their answers and writings are mainly conclusions of law, devoid of evidence, containing no avowals that the certified hearing record of Respondents' statements are true, or that Petitioner's other claims of privacy invasion are false. Especially noteworthy is that nowhere do the Respondents and the hearing judges write anywhere that what the Respondents published or did were done in the proper manner, at the proper occasion, from proper motives, and from reasonable or probable cause to obtain conditional privilege. Instead, Judge Baldwin is the first to use absolute privilege as a defense with misplaced case law, and no proof -- except the most general of conclusions -- that, and how, the words and acts were pertinent and relevant to the issues of the case.

Her only and controlling case to disprove the claims of privacy invasion is COX BROADCASTING CORP. V. COHN, 420 U.S. 469 (1975). COX dealt with free press matters and publications therein. COX is misplaced. On p.6 of her Opinion she quotes from COX: "There can be no recovery for any disclosure of, and publicity to matters which are of legitimate concern and public record." Her conclusion is both legal and unsupported, and a matter she should not have considered because it concerns things outside the pleadings, patently false, fails to say why and which matters are of legitimate concern, and what "public record" she is talking about. MIREE V. DEKALB COUNTY, GA., 433 U.S. 25, 27 n. 2 (1977); FRCP 8 (a) (2); CONLEY V. GIBSON, 355 U.S. 41, 45-46; Charles A. Wright, Arthur R. Miller, Federal Practice and Procedure § 1366 (West 1990). Judge Baldwin alleges the Respondents have no liability for giving publicity to facts about Petitioner because the public always has a need for open debate to which one's right to privacy must yield. But she misreads COX which said that there is no liability when the information and facts are <u>already</u> public and

matters of public record. Such is not the circumstance here. There is not a trace of evidence in any of the records and Respondents' briefs that any of the Respondents' statements are true or even verifiable. COX, at 497, says that Respondents' and Judge Baldwin's obtaining of such facts published by the Respondents without permission is an invasion of privacy unless first published first somewhere in open judicial records. For example, that Petitioner sold or even owned illegal guns, that he did not pay federal and state taxes, that he committed felonies by stealing from the local municipality, that he was an illegal business man, are some of the statements Judge Baldwin writes are not defamatory, do not put Petitioner in a bad light, and could not possibly be highly offensive to, nor is conduct to which a reasonable person would strongly object.

THE UNITED STATES SUPREME COURT AND THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION V. FAVISH CASE

The FAVISH case deals with the issue and question about which Judge Baldwin was concerned: Whether the privacy interest claim of a party outweighs the public interest of disclosure of facts injurious to his or her person by causing pain and inflicting a disruption to one's peace of mind? A unanimous Court disagrees with Judge Baldwin, the Respondents and the PA appellate courts.

In FAVISH this court wrote that Respondents here must show that "the public interest to be advanced is a significant one, an interest more specific than having the information for its own sake, and that the information is likely to advance that interest." FAVISH, 541 U.S. at 172. This Court said that the privacy interest is paramount, and the public interests must outweigh the privacy claim. This Court then said what none of the state courts wrote, namely, defendants "must produce evidence that would warrant a belief by a

reasonable person that the alleged...impropriety might have occurred." Id., at 174. This Court also said that courts must realize where the subject "is a private person," there "privacy interest is at its apex." Id., at 166, quoting from DEPT. OF JUSTICE V. REPORTERS COMM. FOR FREEDOM OF THE PRESS, 489 U.S. 749, 780.

The FAVISH case and this case are not identical, but similar. In this case, the Respondents produced not a scintilla of evidence that what they did and said had, or could establish, any public interest. In FAVISH, the respondent, Favish, produced no evidence that the materials asked for and then eventually published would not be injurious to others' privacy rights and their personal feelings and interests. While the facts are similar, the concepts themselves are identical, namely, to achieve a significant public interest in allegedly defamatory and injurious facts, a defendant must be able to produce evidence that disclosure of allegedly false facts outweighs a personal privacy interest. If evidence is not produced, like matters already are of public record, the comments and disclosures may not be published.

THE LAW OF PENNSYLVANIA ZONING BOARDS AND HEARINGS IN A NUTSHELL

In Pennsylvania, any town, whether having 10 or 10,000 residents must created a zoning hearing board, as long as it has enacted in some way a zoning ordinance according to present or past Pennsylvania law. PENNSYLVANIA MUNICIPALITIES PLANNING CODE (PMPC), § 901; 53 P.S. § 10901. "Judicial attention is focused upon the question whether the hearing granted...was basically fair...available witnesses must be permitted to testify. Hearings provide an opportunity for all persons to express opinions on the issues. (Petitioner's emphasis). Since technical rules of evidence do not apply, opinion testimony may be taken into consideration." Robert M. Anderson, LAW OF ZONING IN PENNSYLVANIA, Bk. 1, Ch. 19 (1982).

not apply, opinion testimony may be taken into consideration." Robert M. Anderson, LAW OF ZONING IN PENNSYLVANIA, Bk. 1, Ch. 19 (1982). "The self-serving nature of certain evidence presented is a relevant factor to consider." BELL SAV. & LOAN ASSOC. V. ZONING HEARING BOARD, 8 CMWLTH CT. 335 (1973).

The law in Pennsylvania regarding zoning hearing boards is that they are administrative bodies whose character changes to "judicial" when citizens make hearing requests for variances or special exceptions. Its officers are appointed by a local council governing body for their personal knowledge of land-use by living in the community. No law degree or legal experience is required. (Anderson, LAW OF ZONING IN PENNSYLVANIA, Ch. 19). Thousands of zoning hearings occur monthly in Pennsylvania's 67 counties comprising thousands of towns, boroughs and townships.

REASONS FOR GRANTING THE WRIT

Petitioner seeks a Writ based on the facts and case-law tendered in his three (3) QUESTIONS PRESENTED, and advanced in greater detail in his STATEMENT OF THE CASE. The query is propounded whether absolute privilege should be accorded Respondents in this or similar cases in Pennsylvania or elsewhere.

CONCLUSION

WHEREFORE, Petitioner respecfully prays that a Writ of Certiorari be granted.

S/ GEORGE L. KOYNOK, Pro Se

2850 Glenmore Avenue
Pittsburgh, PA 15216

412/ 531-6577

APPENDIX

A.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

GEORGE L. KOYNOK,
Plaintiff

vs.

PHYLISS M. HAMILTON, et al.
Defendants

CIVIL DIVISION
GD 03-21655

ORDER OF COURT

On this 15th day of October, 2004, upon consideration of plaintiff's motion, it is ordered that plaintiff's Amended Complaint is accepted, and the defendants are given 30 days to answer same. Paragraph 60 is stricken as well is any related exhibits.

BY THE COURT:

S/ WETTICK, J.

B.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

GEORGE L. KOYNOK, Plaintiff vs. PHYLISS M. HAMILTON, et al., Defendants	CIVIL DIVISION NO.GD 03-21655

ORDER OF COURT

AND NOW, this 21st day of April, 2004, after consideration of the pleadings filed in this case, including Preliminary Objections and Briefs, and arguments in court, it is herby ADJUDGED. ORDERED AND DECREED that the Preliminary Objections to the Counterclaims of Russell Reed and of the other mentioned defendants are hereby dismissed. Plaintiff to answer Counterclaims within 30 days.

BY THE COURT:

S/ O'REILLY, J.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

GEORGE L. KOYNOK, Plaintiff	
vs.	CIVIL DIVISION NO.GD 03-21655
PHYLISS M. HAMILTON, et al., Defendants	

ORDER OF COURT

AND NOW, this 21st day of April, 2004, upon consideration of the within Preliminary Objections and Supporting Brief of the plaintiff, George L. Koynok, and any arguments held in open court, it is hereby ADJUDGED, ORDERED AND DECREED that the Preliminary Objection of the defendant-Hamiltons are sustained and plaintiffs complaint as to them is dismissed with prejudice, case controlled by Elia V. Erie 634 A 2d 657 (PA SUPER 1993)

BY THE COURT:

S/ O'REILLY, J.

C.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

GEORGE L. KOYNOK,
Plaintiff

vs.

CIVIL DIVISION
NO.GD 03-21655

PHYLISS M. HAMILTON,
ANNA M. HAMILTON,
KENNETH R. LONSINGER, RUSSELL
REED, ANDREW J. DRUCKENBROD,
RICHARD M. MESSIMER,
ELMER W. MALLASEE, JR.,and
DONNA L. MALLASEE, individually
and as husband and wife,
ANNA MARIE GERAUD,
RICHARD D. GRUBB and
AUDREY GRUBB, individually
and as husband and wife
Defendants

ORDER OF COURT

AND NOW, to-wit, this 18th day of February, 2005, upon consideration of the foregoing Preliminary Objections of Defendant, Russell L. Reed, it is hereby ORDERED, ADJUDGED and DECREED that said Preliminary Objections are hereby sustained.

It is hereby ORDERED that the Plaintiff's claims of Invasion of Privacy, Defamation and Punitive Damages against the Defendant are hereby dismissed with prejudice.

BY THE COURT:

S/ CA BALDWIN, J.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

GEORGE L. KOYNOK,
Plaintiff

vs. CIVIL DIVISION
NO.GD 03-21655

PHYLISS M. HAMILTON, ANNA M. HAMILTON, KENNETH R. LONSINGER, RUSSELL L. REED, ANDREW J. DRUCKENBROD, RICHARD W. MESSIMER, ELMER W. MALLASEE, JR., and DONNA L. MALLASEE, individually and as husband and wife, ANNA MARIE GERAUD,RICHARD D. GRUBB and AUDREY GRUBB, individually and as husband and wife
Defendants

ORDER OF COURT

AND NOW, to-wit, this 18th day of February, 2005, upon consideration of the foregoing Preliminary Objections of Defendants, Andrew J. Druckenbrod, Richard W. Messimer, Elmer M. Mallasee, Jr., and Donna L. Mallasee, individually and as husband and wife, Anna Marie Geraud, Richard D. Grubb and Audrey Grubb, individually and as husband and wife, is hereby ORDERED, ADJUDGED and DECREED that said Preliminary Objections are hereby sustained. Plaintiff has 30 days to file a more specific pleading as to defamatory statements made subsequent to the zoning hearing. The claim of defamation, invasion of privacy and punitive damages at the zoning hearing is dismissed.

BY THE COURT:
S/ CA BALDWIN, J.

D.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

GEORGE L. KOYNOK,
Plaintiff

vs. NO.GD 03-21655
SUPERIOR COURT 480 WDA 2005

PHYLISS M. HAMILTON, ANNA M.
HAMILTON, KENNETH R. LONSINGER,
RUSSELL L. REED, ANDREW J.
DRUCKENBROD, RICHARD W.
MESSIMER, ELMER M. MALLASEE, JR.
individually and as husband and wife,
ANNA MARIE GERAUD,
RICHARD D. GRUBB and
AUDREY GRUBB, individually
and as husband and wife
Defendants

OPINION OF COURT

BALDWIN, J. DATED: May 23, 2005

Plaintiff, George L. Koynok ("Mr. Koynok"), *pro se*, appeals from this Court's Orders of February 18, 2005, which sustained the two (2) sets of preliminary objections separately filed by the Defendants in the above captioned case (collectively referred to hereafter as the "Defendants"). These Orders state:

ORDER OF COURT

AND NOW, to wit, this 18th day of February 2005, upon consideration of the foregoing Preliminary Objections of Defendants, Andrew J. Druckenbrod, Richard W. Messimer, Elmer M. Mallasee, Jr. and Donna Mallasee, individually and as husband and wife, Anna Marie Geraud, Richard D. Grubb and Audrey Grubb, individually and as husand and wife, it is hereby ORDERED, ADJUDGED, and DECREED that said Preliminary Objections are hereby sustained.

Plaintiff has 30 days to file a more specific pleading as to defamatory statements made subsequent to the zoning hearing. The claims of defamation, invasion of privacy and punitive damages, at the zoning hearing, are dismissed.

BY THE COURT:

S/ CA BALDWIN, J.

ORDER OF COURT

AND NOW, to wit, this 18th day of February 2005, upon consideration of the foregoing Preliminary Objections of Defendant, Russell L. Reed, it is hereby ORDERED, ADJUDGED, and DECREED that said Preliminary Objections are hereby sustained. It is hereby ORDERED that Plaintiff's claims of Invasion of Privacy, Defamation, and Punitive Damages against the Defendant are hereby dismissed with prejudice.

BY THE COURT:

S/ CA BALDWIN, J.

ISSUES

Mr. Koynok timely filed his notice of appeal with the Superior Court. In compliance with the scheduling Order of this Court, dated March 16, 2005, he submitted his concise statement of matters complained of on appeal with the undersigned, pursuant to Pa. R.A.P. 1925(b). Plaintiff complains that:

1. All of Defendants' listed statements were false and injurious to Plaintiff's reputation:

2. All of Defendants' listed statements were actionable either as libelous or slanderous;

3. All of Defendants' listed statements were actionable either as libel or slander, per se;

4. Statements made by certain Defendants, at the zoning hearing, caused Plaintiff to be ridiculed, degraded, and perceived as a criminal or dishonest person in the community.

5. The statements made by the Defendants, at the zoning hearing, constituted an abuse of privilege as demonstrated by the pleadings and submissions of record;

6. Defendants statements, at the zoning hearing, cannot be considered of proper motive or as "fair comment;"

7. Plaintiff's factual averments demonstrate that Defendants' oral and written statements were made with malice and a blatant disregard for the truth;

8. The statements made by the Defendants, at the zoning hearing, caused an invasion of Plaintiff's privacy because the statements were unjustified, unauthorized, and untrue resulting in Plaintiff's mental anguish, emotional distress, embarrassment, and public humiliation; and

9. Defendants failed to show that they acted reasonably and in good faith, at the zoning hearing, under the circumstances when they intentionally, recklessly, and negligently invaded Plaintiff's privacy by uttering various untrue statements to the effect that he is a thief, crook, dishonest cheat, illegitimate landlord, a danger or menace to small children in the community all in disregard of social decency, and all in wrongful and unwarranted violation of the law in Pennsylvania.

FACTS

This Court has considered all of the facts and reasonable inferences adduced from the pleadings and the parties' submissions filed in this case. These filings reveal the following:

Plaintiff instituted this civil action for money damages against his neighbors residing on Glenmore Avenue, in the Borough of Dormont, Allegheny County, Pennsylvania 15216. In his lawsuit, the Plaintiff submits that the Defendants are liable to him for money damages because they committed actionable torts for the invasion of his privacy and defamation. Plaintiff contends that as a result of these specific claims, punitive damages also lie. Mr. Koynok alleges that these deliberate harms arose out of the Defendants' public comments about him at a zoning hearing held by borough officials on April 17, 2003, concerning his formal application for variances affecting his realty at 2850 Glenmore Avenue.

The Borough of Dormont required that Mr. Koynok come into compliance with respect to several regulations concerning the approved use for his property. Plaintiff then sought a zoning variance. The Board heard from the Plaintiff during public comment on the impact that the requested zoning variance would have on the neighborhood. The Defendants also expressed their individual concerns in opposition to the variance at that time. After the hearing, the Board denied the Plaintiff's zoning application for the variance.

Mr. Koynok filed this lawsuit on December 24, 2003. In Count One of the Plaintiff's Complaint, he asserts a claim against the Defendants for the invasion of privacy. In Count Two, the Plaintiff pleads a claim for defamation. Lastly, at Count Three, Mr. Koynok claims punitive damages.

On February 20, 2004, the Defendants filed an Answer to Plaintiff's Complaint, along with a Counterclaim against Plaintiff for the wrongful use of civil proceedings. Plaintiff responded by filing preliminary objections to the Defendants' Counterclaim. On April 21, 2004, the Honorable Timothy Patrick O'Reilly issued an Order denying the Plaintiff's preliminary objections.

Mr. Koynok filed an interlocutory appeal from that Order of the Superior Court, at 1883 WDA 2004, which has been dismissed, as of December 27, 2004. Meanwhile, Plaintiff filed a Motion for Leave to Amend his Complaint in an attempt to seek additional redress based on several statements purportedly made to him by attorney Walter J. Nalducci in the course of his legal representation of several of the Defendants.

On October 11, 2004, Honorable R. Stanton Wettick, Jr., issued an Order that denied Koynok's Motion as to the comments allegedly made by legal counsel, but granted the Plaintiff leave to amend his original complaint to include other claims for punitive damages. In response to that Order, Plaintiff filed a Motion for Reconsideration, which has been denied by operation of law. The Defendants next filed the subject preliminary objections demurring to the amended claims filed by the Plaintiff.

On February 18, 2005, the Court heard the oral arguments of the parties and reviewed the written submissions presented. By Orders issued that same day, the Court sustained all of the Defendants' Preliminary Objections and dismissed the Plaintiff's claims, except for the claims involving matters subsequent to the zoning hearing.

The undersigned also permitted Mr. Koynok thirty (30) days to file a more specific pleading as to other defamatory statements. For the reasons that follow, the Orders being appealed from should be affirmed.

STANDARD OF REVIEW

The applicable standard of review for a trial court's sustaining of a preliminary objection in the nature of a demurrer is well settled. Pa.R.Civ.P. 1028 (a) (4). When material allegations, viewed in the light most favorable to the non-moving party, as here, lack of sufficient factual basis upon which a legal recovery can be made, the law clearly requires that the trial court sustain a preliminary objection in the nature of a demurrer. Hawks by Hawks v. Livermore, 629 A. 2d 270 (Pa. Cmwlth. 1993). The Court's decision to sustain the preliminary objections because the Plaintiff has failed to state a legal claim will not be disturbed on appeal unless there is proof that, in so doing, it either committed an error of law, abused its discretion, or violated any Constitutional right. Williams v. Philadelphia Housing Authority, 2005 WL 76938 (Pa. Cmwlth. (April 28, 2005)).

DISCUSSION

A demurrer challenges the sufficiency of a complaint. A demurrer must be sustained where it is free and clear from doubt that despite the facts averred and the reasonable inferences derived therefrom, the pleader has not established his right to relief. Bower v. Bower, 611 A.2d 181 (Pa. 1992). The Court will address each of the Plaintiff's claims, separately.

INVASION OF PRIVACY

Mr. Koynok argues that certain public comments made by the Defendants at the zoning hearing invaded his privacy. These complaints, interestingly, first surfaced only when Plaintiff's application for the zoning variance was denied.

This Court's analysis is thus limited to a review of the alleged offensive remarks purportedly made by the Defendants at the zoning hearing.

A claim for the invasion of another's privacy may lie on one or more fact-specific patterns. Restatement (Second) of Torts §§ 652B-E. This intentional tort, however, cannot form the basis of a recovery absent an adequate factual basis for the requisite elements of the offense. In his amended complaint, Plaintiff does not aver that Defendants ever misappropriated his name, image, or likeness. Restatement (Second) of Torts §652C. Nor does Plaintiff allege that Defendants intruded upon his personal seclusion or privacy in any unreasonable manner. Restatement (Second) of Torts §652B. As such , the only factual circumstance that possibly fits into one or more of the above referenced claims is the Plaintiff's perception of being cast in a false light due to the type of publicity given to him at the zoning hearing. There can be no recovery for any disclosure of, and publicity to matters which are of legitimate concern and public record. Cox Broadcasting Co. v. Cohn, 420 U.S. 469 (1974).

Although the zoning board hearing on Mr. Koynok's application for the requested variance may have caused Plaintiff some negative or adverse publicity, it was his application for the zoning variance that began the public proceeding in the first instance. Plaintiff's reasonable expectation of privacy is diminished relative to the legitimate need for fair public comment.

Plaintiff bears the burden of stating a cause of action for a specific invasion of his privacy. The necessary elements for an invasion of privacy claim under the Restatement (Second) of Torts §652D are, as follows:

1. Publicity given to the private life of another
2. Which is highly offensive to a reasonable person;and
3. That is not of a legitimate concern to the public.

The necessary elements for an invasion of privacy claim under the Restatement (Second) of Torts §652E are as follows:

1. False publicity given to another;
2. Which places the other before the public;
3. Casting the person in a false light;
4. That is highly offensive to a reasonable person;
5. That is not of a legitimate concern; and that
6. Is publicized with knowledge of, or in reckless disregard as to its lack of truth.

A review of the pleadings reveals that Plaintiff has not pled enough pertinent facts to serve as the basis of either of these claims, and that the facts which he has pled negate Defendants' liability. Plaintiff, for instance, strongly suggests that Defendant Anna Marie Geraud's conduct intimidates him, especially, when she walks her cat down the street and at times, pauses as she passes his residence. Plaintiff is also offended by Defendant Geraud's boyfriend's frequent trespasses on his property by rummaging through his bushes in pursuit of stray cats. This complained of activity goes well beyond the scope of the present Orders being appealed and the elements of each claim.

Plaintiff also is threatened by the Defendant Audrey Grubb's and her husband's verbal protests, attempts of harassment, repetitive references to Mr. Koynok's ongoing activities and complaints to the Borough officials. Plaintiff experiences scorn, shame, a sense of humiliation, hatred and embarassment on account of Mrs. Grubb's comments, and her videotaping of the comings and goings of his tenants. Again, none of these matters are relevant to Mr. Koynok's invasion of privacy claims. Despite reciting these and other perceived grievances, the Plaintiff fails to state a claim.

A review of the comments voiced by the Defendants at the hearing fails to support the requisite elements for these claims. Furthermore, where the Plaintiff's privacy interest is balanced against the public's need for open debate, as here, the

former's right to privacy must yield to the rights of others.

This Court's Order sustaining Defendants' Preliminary Objections and dismissing Plaintiff's invasion of privacy claims is appropriate. Since Mr. Koynok has not pled enough material facts to establish his right to recover and because the pleadings do not support the requisite elements for these offenses, as stated above, Plaintiff's claims for invasion of privacy must fail. Count I must be dismissed.

DEFAMATION

Plaintiff bears the burden of stating a cause of action for a defamation. In order to properly plead a recognizable claim for defamation, here, Plaintiff's amended complaint must contain factual assertions supporting the necessary elements of this offense. Milliner v. Enck, et al, 709 A.2d 417 (Pa. Super. 1998). The elements of a defamation are as follows:

1. The defamatory character of the communication;
2. The defendant's publication of the communication;
3. The application of the communication to the Plaintiff;
4. The recipient's understanding of the defamatory character of the communication;
5. The recipient's understanding that the communication was intended to be implied to the Plaintiff;
6. The publication of the communication caused special harm to the Plaintiff; and
7. An abuse of the conditionally privileged occasion.

42 Pa. C.S.A., Section 8343 (A)

The law provides that only statements of fact can serve as the basis for a defamation claim. Elia v. Erie Insurance Exchange, 634 A.2d 657 (Pa. Super. 1993). An expression of an opinion no matter how derogatory and unjustified is generally speaking not actionable. See, e.g., Restatement (Second) of Torts Section 566, Comment c; Green v. Minzer,

692 A.2d 169 (Pa. Super. 1997). An opinion may, however, support a claim for defamation, if it can be reasonably understood by the recipient to imply the existence of some other undisclosed and defamatory fact. Mathias V. Carpenter, 587 A.2d 1 (Pa. Super. 1991).

The law provides that certain communications when made in select or limited contexts and rendered in a proper manner based on reasonable cause are absolutely privileged. J. Hartman & Co. Inc, v. Hyman, et al, 134 A. 486 (Pa. 1926); Bochetto v. Gibson, 860 A. 2d 67 (Pa. 2004). The declarant is immune from all civil liability on these occasions. McGraw v. Hamilton, 15 Pa. Super 181, 1900 WL 5323 (Pa. Super.) (No civil action for damages lies on account of defamations contained in absolutely privileged communications).

This case has been properly disposed of, at the demurrer stage, because the absolute privilege for Defendants' public statements appear on the face of the Plaintiff's complaint. DeSantis v. Swigart, 442 A.2d 770 (Pa. Super. 1982) (Absolute privilege in a libel case may be raised by a demurrer where the defendant's privilege appears on the face of the complaint). The Courts of this Commonwealth have consistently extended this rule to participants in quasi-judicial proceedings. See, e.g., Shortz v. Farrell, 193 A.20, 21-22 (Pa. 1937); and Urbano v. Meneses, 431 A.2d 308 (Pa. Super. 1981). In the case of Urbano v. Meneses, 431 A.2d 308 (Pa. Super. 1981), the Pennsylvania Superior Court determined that no civil liability lies on the basis of absolute privilege when the defamatory statements were published by a party in a zoning board proceeding. Meneses, supra. The Superior Court reasoned that the zoning board hearing process is adversarial. Id. The Board renders decisions based on an application of the law to the facts, and its decisions are reviewable on appeal. Id. Since the zoning board proceeding is analogous to a judicial proceeding, it is logical that the same absolute privilege exists. Post v. Mendel, 507 A.

2d 351 (Pa. 1986) (Court held that there was no civil liability when the defamatory statements were published by a party in a judicial proceeding where they were relevant and material to an issue, therein, on the basis of absolute privilege).

The Defendants at the zoning board hearing expressed concerns about the detrimental impact they believed that the Plaintiff's requested zoning variance would have on the neighborhood. It is imperative for the zoning board to obtain as much needed input from the person asking for particular relief, as well as from other individuals in the community who may be affected by its decision. Our rule of law encourages witnesses to come forth freely, and without fear of adverse consequences in order for the Board to obtain complete and unintimidated testimony. Rolla v. Westmoreland Health System, 651 A. 2d 160, 162 (Pa. Super. 1994). Therefore, the law mandates that Defendants be given absolute protection from defamatory liability even at the expense of uncompensated harm to the Plaintiff's reputation. William L. Prosser, The Law of Torts, Section 114 at 776 (4th ed. 1971).

Since Defendants were acting in furtherance of a rational community interest and because their statements were indeed relevant to the zoning board proceeding, their communications are absolutely privileged. This Court finds that the Plaintiff has not set forth sufficient facts necessary to support the elements of his defamation claims, as a matter of law.

This Court concludes that Mr. Koynok is not entitled to a recovery on the theory of defamation. Defendants are entitled to the demurrer entered as to this count.

PUNITIVE DAMAGES

Pennsylvania does not recognize an independent claim for punitive damages. Plaintiff bears the burden of stating an actual claim upon which punitive damages can be awarded.

See, e.g., Hutchison v. Luddy, 870 A. 2d 766 (Pa. 2005). Absent an underlying claim that provides Plaintiff with relief, punitive damages cannot be awarded to him. SHV Coal, Inc. v. Continental Grain Co., v. Wingrove, 587 A. 2d 702 (Pa. 1991). (The determination of the type of conduct that gives rise to an award of punitive damages rests squarely within the sound discretion of the trial court). There are no *prima facie* claims for invasion of privacy or defamation. Therefore, there can be no claim for punitive damages.

Mr. Koynok has failed to plead sufficient facts in support of his underlying claims for invasion of privacy and defamation. Since Plaintiff's claims have failed, it follows as a matter of law that no punitive damages can lie.

CONCLUSION

Viewing all of the factual allegations set forth in Mr. Koynok's amended complaint liberally and giving Plaintiff every conceivable reasonable inference to be derived therefrom, no recovery can be made. The demurrers were properly sustained and the Orders, dated February 18, 2005, must be affirmed.

E.

NON-PRECEDENTIAL DECISION
SEE SUPERIOR COURT I.O.P. 65.37

GEORGE L. KOYNOK,
Appellant

v.

IN THE SUPERIOR COURT OF
PENNSYLVANIA
NO. 480 WDA 2005

PHYLISS M. HAMILTON, ANNA M. HAMILTON, KENNETH R. LONSINGER, RUSSELL L. REED, ANDREW J. DRUCKENBROAD, RICHARD W. MESSIMER, ELMER M. MALLASEE, JR., DONNA L. MALLASEE, individually and as husband and wife, ANNA MARIE GERAUD, RICHARD D. GRUBB, and AUDREY GRUBB, individually and as husband and wife,
Appellees

Appeal from the Order of February 18, 2005
In the Court of Common Pleas, ALLEGHENY County
Civil Division, at GD No. 03-21655

BEFORE: LALLY-GREEN, TODD, and McCAFFERY, JJ.

MEMORANDUM: FILED: July 11, 2006

Appellant, George L. Koynok, has appealed from an order which sustained the preliminary objections of Appellees Russell L. Reed, Andrew J. Druckenbroad, Richard W. Messimer, Elmer M. Mallasee, Jr., Donna L. Mallasee, Anna Marie Geraud, Richard D. Grubb, and Audrey Grubb, ("Appellees")[1] and which dismissed Appellant's

claims of defamation, invasion

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[1]Also included among the "Appellees" are Phyliss M. Hamilton and Anna M. Hamilton, whose preliminary objections were similarly sustained via an earlier order dated April 21, 2004. Further, it appears that the trial court inadvertently omitted Kenneth R. Lonsinger from the list of privacy and punitive damages. [2]After careful review, we affirm.

The factual and procedural background of this matter, as summarized by the trial court and supported by the certified record, is as follows. Appellant is the owner of certain realty located in the Borough of Dormont in Allegheny County. Because the borough required that Appellant comply with several regulations regarding the use of his property, Appellant sought a zoning variance. On April 17, 2003, borough officials held a zoning hearing regarding Appellant's formal variance application. During the hearing, Appellees, who are Appellant's neighbors, manifested their opposition to Appellant's application. Specifically, the Hamiltons submitted a letter detailing their opposition, while the other Appellees attended the hearing and voiced their individual concerns. Ultimately, the zoning board denied Appellant's request for a variance.

In December 2003, Appellant filed a complaint against Appellees stemming from the comments they made at the zoning hearing. Appellant asserted three specific claims: invasion of privacy, defamation and punitive damages.

Defendants/Appellees. However, that omission is of no moment as a result of Appellant's praecipe to reduce the order dated February 18, 2005 to judgment in favor of "all defendants" as detailed **infra**.

[2] We note that the docket reflects Appellant's March 22, 2005 praecipe, pursuant to Pa.R.C.P. 301

(c), requesting that the trial court's February 18, 2005 order be reduced to a judgment in favor of all defendants. However, it appears that such judgment has not yet been entered, and therefore this appeal is, technically, premature. However, for purposes of judicial economy, we shall regard as done that which ought to have been done, as is our practice. ***McCormick v. Northeastern Bank of Pennsylvania,*** 522 Pa. 251, 254 n.1, 561 A.2d 328, 330 n.1 (1989).

After much procedural wrangling not germane to our disposition, Appellant was permitted to amend his original complaint only to include additional claims for punitive damages. Thereafter, Appellees filed preliminary objections demurring to the claims contained in Appellant's amended complaint. On February 18, 2005, the court heard oral argument from the parties, and issued an order that same day sustaining Appellees' preliminary objections and dismising all of the Appellant's claims except those involving matters which occurred subsequent to the zoning hearing. This timely appeal followed wherein Appellant raises the following numerous issues for our review, set forth here *verbatim:*

1. Whether the lower court erred in dismissing Koynok's complaint for defamation and invasion of privacy (two separate causes of action) holding ELIA V. ERIE IN. EXCH., 430 Pa. Super. 384 (1993) controlled the dismissal since ELIA dealt soley with a defamation case?

2. Whether Koynok's Brief adequately proves defendant Hamilton's statements were not "fair comment" but, at best, implied the exsistence of undisclosed facts about the plaintiff which were not only false but defamatory in character when looking at all the facts and circumstances in context?

3. Whether Koynok's Brief adequately proves the Hamiltons joined in a conspiracy of joint-tortfeasors-not considered by the court below-to create sufficient doubt so as to require their preliminary objections in nature of a demurrer be dismissed?
4. Whether Koynok's Brief below in opposition to Hamilton's preliminary objections, adequately proved the Hamiltons abused conditional privilege regarding the defamation count?
5. Whether Russell Reed and the other 9 defendants met their burden of proof regarding defamation, namely: 10 that their communications were true, 2) that the occasion was privileged, 3) that their statements were made in the proper manner, from the proper motive, and based on reasonable or probably cause?
6. Whether the plaintiff met his burden of proof relative to defamation?
7. Whether it was error for Judge Baldwin to 1) dismiss Koynok's Amended Complaint, 2) Koynok's claim for punitive damages, and 3) Koynok's claim for intrusion into seclusion for certain of the 11 defendants, since Judge Wettick had already approved the three?
8. Whether Koynok adequately pled all the elements for privacy invasion (false light) and privacy invasion (intrusion into seclusion)?
9. Whether, with regard to the privacy counts, the defendants proved they had acted in good faith, and that they met the PA law requiring they show what they said and did were objectively reasonable at the times and places in question?
10. Whether the courts below erred by refusing to consider and write about Koynok's fundamental theory that all 11 dfendants were joint-tortfeasors who all participated in some way in the defamation and privacy matters-acts causing injury that cannot be apportioned, when they all failed to perform a common duty owned to Koynok?
11. Whether Koynok's pleadings adequately pled maliciousness on the part of the defendants, while their demurrers may not determine maliciousness?

12. Whether Judge Baldwin committed error when she considered nine of the defendants statements as "fair comment"?
13. Whether Walter J. Nalducci may be considered as a defendant in this case because he intentionally invaded Koynok's seclusion?
14. Whether Walter J. Nalducci lacks absolute immunity, as do all the defendant witnesses, because their acts and statements were not pertinent, material and relevant to the occasion of a zoning board hearing (as to the defendants) nor to the causes of action and their issues (as to Nalducci)?
15. Whether Walter J. Nalducci's behavior and statements may be imputed against his clients for damages Nalducci's injuries to Koynok since his activities were not pertinent material and relevant to the issues of this case?
16. Whether the Preliminary Objections of Koynok against nine of the defendants in Judge O'Reilly's court, should ave been sustained, and paragraph 39 of the defendants' Answer and New Matter should have been stricken for abusing Rules of Civil Procedure?
17. Whether this Court may take up the question presented by the case of WECHT V. PG PUBLISHING CO., 725 A.2d. 788 (1999), since if it grants Koynok's claims, it may also permit him to recover for emotional distress?

(Appellant's Brief iv-vii).

We begin by noting that Appellant's rambling and repetitive "Satement of the Questions Involved" stands in serious and substantial contravention of the Pennsylvania Rules of Appellate Procedure; indeed, it could be grounds for quashal in and of itself. Rule 2116 (a) provides that the statement of the questions involved "should not ordinarily exceed 15 lines" and "must never exceed one page" Pa.R.A.P. 2116(a). Briefs which contain substantial defects and which fail to comply with the requirements of our rules of appellate procedure may cause the quashing or dismissing of an appeal.

Grose v. Procter & Gamble Paper Products, 866 A.2d 437, 439-440 n.3 (Pa.Super.2004), *appeal denied*,___Pa.___, 889 A.2d (2005) (citing Pa.R.A.P. 2101); ***see also Rosselli v. Rosselli.*** 750 A.2d 355 (Pa.Super. 2000) (quashing appeal for substantial defect in reproduced record).[3]

In the case of *sub judice*, Appellant presents **seventeen** "issues" in his statement of questions involved, which statement not only exceeds 15 lines but takes more then three pages to set forth. However, the trial court did a masterful job of distilling Appellant's arguments into discrete issues capable of review, as set forth in its Pa. R.A.P. 1925(a) statement. Therefore, due only to the herculean efforts of the trial court are we able to perform a review of those of Appellant's issues which are also contained in his Rule 1925(b) statement.[4] **See Signora v. Liberty Travel**, 886 A.2d 284, 289 n.4 (Pa. Super. 2005) (engaging in appellate review despite "lengthy", repetitive, and far from consise" Rule 1925(b) statement).

When reviewing a trial court's ruling on preliminary objections in the nature of a demurrer, we note:

Preliminary objections in the nature of a demurrer test the legal sufficiency of the plaintiff's complaint. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Thus, our scope of review is plenary and our standard of

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[3] While we are mindful that Appellant did proceed in this appeal *pro se*, we nonetheless stress that "while this [C]ourt is willing to liberally construe materials filed by a *pro se* litigant, we note that [an] appellant is not entitled to any particular advantage because he lacks legal training." ***Rich v. Acrivos,*** 815 A.2d 1106, 1108 (Pa.Super. 2003) (quotation omitted).

[4] To the extend that Appellant has raised issues in his appellate brief which are not contained in his Rule 1925(b) statement, those issues are waived. ***Milicic v. Basketball Marketing Co., Inc.,*** 857 A.2d 689 (Pa.Super. 2004).

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review mirrors that of the trial court. Accepting all material averments as true, we must determine whether the complaint adequately states a claim for relief under any theory of law. ***Grose v. Procter & Gamble Paper Products, supra*** at 437, 440 (quotations and citations omitted).

After a thorough review of the record, the briefs of the parties, the applicable law, and the trial court's well-reasoned opinion, we conclude that there is no merit to any of these issues Appellant has raised on appeal. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (**See** Trial Court Opinion at 4-10) (finding that (1) Appellant did not plead sufficient material facts to support a *prima facie* case for invasion of privacy; (2) Appellees' comments at the zoning hearing were absolutely privileged as they were made at a quasi-judicial proceeding; therefore, Appellant is not entitled to a recovery based on defamation; and (3) Appellant cannot recover punitive damages as he has not established a *prima facie* case for either invasion of privacy or defamation). Accordingly, we affirm on the basis of that opinion.

Order Affirmed.

Judgment Entered:

S/ Eleanor R. Valecko
Deputy Prothonotary

DATE: July 11, 2006

F.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

GEORGE L. KOYNOK
Petitioner

No. 405 WAL 2006

Petition for Allowance of Appeal from the Order of the Superior Court

v.

PHYLISS M. HAMILTON, ANNA M. HAMILTON, KENNETH R. LONSINGER, RUSSELL L. REED, ANDREW J. DRUCKENBROD, RICHARD W. MESSIMER, ELMER W. MALLASEE, JR., DONNA L . MALLASEE, individually and as husband and wife, ANNA MARIE GERAUD, RICHARD D. GRUBB, AND AUDREY GRUBB, individually and as husband and wife,
Respondents

ORDER

PER CURIAM

AND NOW, this 30th day of November 2006, the Petition for Allowance of Appeal is DENIED.

Madame Justice Baldwin did not participate in the consideration or decision of this matter.

A True copy Patricia Nicola
As of: November 30, 2006
Attest:
Chief Clerk
Supreme Court of Pennsylvania

G.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

GEORGE L. KOYNOK
Appellant,

CIVIL DIVISION

CASE NO. SA-03-00458

v.

CERTIFIED COPY OF RECORD

CODE:

THE ZONING HEARING BOARD
OF THE BOROUGH OF DORMONT,
Appellee

Filed on Behalf of:
Zoning Hearing Board of the Borough of Dormont

v.

THE BOROUGH OF DORMONT,
Intervenor.

Counsel of Record:

DAVID RAVES
Pa. I.D. #62135

MAIELLO, BRUNGO & MAIELLO, LLP
Firm I.D. #515
3301 McCrady Road
Pittsburgh, PA 15235

(412) 242-4400

very much. Fortunately, this is just the Zoning Hearing Board. Fortionately for us, I should say. Is there anybody else that would like to speak?

MR. REED: My name is Russell Reed. I am at 2837 Glenmore Avenue, I agree with what everybody has said tonight. There is a problem with parking. Mr. Mallasee has two cars already. That is a minor issue.

MR MALLASEE: Mr. Koynok.

MR. REED: Mr. Koynok. Sorry. The fact is I am one of the legal landlords on the street. I have a duplex. I have a driveway and a place to park my vehicles, so I do not think I interfere with my neighbors; but there is one other issue that has not been mentioned that I would like to bring up, and that is paying for garbage collection.

I pay double. I have to pay garbage disposal on two units. That is a lot of money over two years. That is an extra $30 I pay every 3 months. He has probably stolen from Dormont about $15 or $20 per

MR. KOYNOK: I object to that.

MR. REED: I do pay double.

CHAIRMAN BURKE: Just as far as that goes, everything that is said tonight is on the record. Things that you do not know for a fact, we do not -- whether or not that is being paid or not, again, it is not relevant to the zoning, but I appreciate your speaking to the issue.

We do not need to get into who is paying for garbage and who is not because, again, fortunately for us, this is zoning.

MR. REED: Right.

CHAIRMAN BURKE: This is not the garbage collection up here, but, thank you.

MR. REED: One more point I would like to make is that I was pretty surprised to hear that a house with multiple units would somehow increase my value.

I would like to see proof or some explanation of how a business and four apartments is going to increase my value. I think if anything, it is going to hurt it.

I can't imagine a person wanting to buy across the street saying, "I want to give

G(2).

MRS. GRUBB: Yes.

MR. KOYNOK: - - or did he do it himself? It is sort of ridiculous.

CHAIRMAN BURKE: Excuse me, Mr. Koynok. Let me assure you that, as a Board, our job is to decide cases based on the facts, if you will. You do hear alot of things, and my philosophy as being up here is to allow our neighbors to say their mind and to speak.

Now, it is our job to determine a case based on facts; and as you say, we have heard plenty of hearsay, both tonight and usually in a lot of cases.

Again, our job is to look at a case based on the facts and the particular situation that we are dealing with.

MR. KOYNOK: I do - -

CHAIRMAN BURKE: I think that getting into discussions or differences of opinions between neighbors is not really a productive way to spend the time here.

We do not really care what letters you put on somebody's desk or porch or not or